

TESTIMONY OF
TOY INDUSTRY ASSOCIATION (TIA)

SUBMITTED TO

SELECT COMMITTEE ON CHILDREN
HOUSE BILL 5314

**AN ACT CONCERNING CHILD SAFE PRODUCTS AND BANNING CADMIUM IN
CHILDREN'S PRODUCTS**

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www.toyassociation.org

Chairman Musto, Chairwoman Urban and Members of the Select Committee on Children, the Toy Industry Association (TIA) appreciates this opportunity to provide testimony in on House Bill 5314. TIA is a not-for-profit trade association composed of more than five hundred (500) members, both large and small in size, located throughout North America. TIA has approximately 20-member companies in Connecticut with over 500 employees.

The Toy Industry Association and its members have long been leaders in toy safety. In this role, we develop safety standards for toys, working with industry, government, consumer organizations, and medical experts. TIA commends the bill sponsors for their keen interest in the safety of children. We share that interest, and our industry is founded on the mission of bringing fun and joy to children's lives – and in that pursuit protecting the safety of our young consumers is our top priority.

However, we have serious concerns regarding House Bill 5314 as it does not consider the existing robust safety system for toys sold in this country – including federal regulation and international standards - and will create unnecessary burden on companies doing business in Connecticut with arguably no measurable increase in safety. It further will burden the State to implement a chemical assessment, reporting, and restriction system at a time when resources are scarce.

Cadmium is Already Regulated in Toys

This legislation would attempt to place a ban on cadmium in children's products; however, federal law preempts Connecticut from including toys in this prohibition. The Consumer Product Safety Improvement Act (CPSIA) provides mandatory consumer product safety rules for toys sold in the U.S.

Section 106 of the CPSIA adopts the toy standards from ASTM (American Society for Testing and Materials) F-963, which applies to ALL toys intended for children under the age of fourteen. ASTM F-963 specifically limits the amount of soluble cadmium in the surface coatings of toys to 75 parts per million (.0075%). Section 106(f) of the CPSIA expressly preempts any state legislation that regulates a consumer product falling under a federal rule.

Therefore, House Bill 5314 would be preempted in two respects. The first is by attempting to regulate the amount of cadmium in toys in a manner not identical to the federal law. The second is that the broad regulation of jewelry provided for in this bill, would incorporate toy jewelry into its definition. Toy or play jewelry is considered that which is intended for play, role-playing and/or dress-up and is usually made of plastic. This jewelry is clearly considered a toy and is subject to the CPSIA/ASTM standards, thus preempting any state regulation of these products. Children's jewelry, on the other hand, is meant for adornment or accessorizing only; it has no play value or other functional use. This is the type of jewelry that has been mentioned in recent media reports and is outside the scope of the pre-emptive mandatory ASTM toy safety standard.

TIA has the highest regards for the safety of its members' products. It is because of this concern for safety, that the toy industry has a task group to look at the issue of cadmium in substrate materials of toys. TIA also plans to use its knowledge in this area to provide guidance to other children's product industries which do not yet have such standards for heavy metals.

Toys are Already Highly Reviewed for Safety

Product safety is the number one-priority for toy manufacturers when developing a product. TIA's members perform rigorous safety assessments prior to the marketing of any product and take into consideration potential impacts on a consumer or child. In addition to meeting stringent internal product safety requirements, toys must also comply with numerous federal environmental and safety regulations under a variety of laws and regulations including: including the Consumer Product Safety Act (CPSA), the Child Safety Protection Act (CSPA), the Federal Hazardous Substances Act (FHSA), the American Society for Testing and Materials (ASTM) Safety Specification on Toys (and which was adopted as a mandatory federal standard on February 10, 2009), the Toxic Substances Control Act; as well as, the many provisions added under the comprehensive Consumer Product Safety Improvement Act (CPSIA) signed into law in 2008. Under this network of requirements, it is illegal to sell toys or children's products containing various substances known to be harmful to children and to which children might be exposed.

Since the rash of recalls for lead in paint used in certain toys in 2007-8, the toy industry has been working diligently to repair the lapse that had occurred in our otherwise strong safety assurance system. We have been recognized by members of the U.S. Congress, federal agencies and other

policymakers and consumer organizations for our efforts to address this issue head on. New federal legislation (CPSIA) further strengthens the requirements and enforcement of toy safety on the national level. We are pleased to report that these efforts have paid off – with a dramatic decrease in the incidents of lead in toys and various assessments that have found toys on store shelves to be in full compliance. We urge Connecticut to consider aligning itself with the federal approach. We support strong regulations for toys but they must be safety-based and national in scope to allow for consistently safe products across the nation.

Legislation Relies on Flawed Scientific Approach

Additionally, HB 5314 is fundamentally flawed in that it lacks the scientific resources and justification to create such a **complex and costly new regulatory system**. House Bill 5314 would require the Agency of Natural Resources to identify chemicals of concern and then require manufacturers and distributors of products that contain “priority chemical” compounds to report the presence of a chemical. These chemicals could then be banned in a short timeframe and manufacturers of products containing a priority chemical would be mandated to find and use a “safer alternative,” with little time to do a proper assessment on such a replacement. This scenario would likely result in regrettable substitutions and provides a disincentive to carefully consider all data on alternative chemicals.

This approach to chemicals management is based on the flawed premise that the mere presence of a chemical with certain hazard traits equates to a safety concern. Rather, safety assessments that consider both exposure and harm are the key to ensuring that products are safe when used by consumers and children. Safety assessments are necessary to ensure that toys are safe for use and existing federal and international regulatory structures already ensure that toys are reviewed in this manner. Additionally, toy manufacturers have knowledge of their products’ use patterns and physical requirements and make safety and protecting human health an essential element of product development and product stewardship.

Policies that seek to restrict the use of certain chemicals or products must be based on credible, safety-based science and should include full consideration of the level of exposure and harm. No clear recognition of safety or exposure is included in this bill. Specifically, there is **no allowance for situations where there is little or no route of exposure** to a “chemical of concern” and the

risks from a substance are adequately controlled. Without establishing a clear criterion that prioritizes action to exposure and safety concerns, from a substance, in a product; decisions under this program are likely to result in inflexible chemical bans, and create the potential for regrettable substitutions.

Immense Cost to Businesses and the State of Connecticut

Legislation to regulate “chemicals of concern” in consumer products and toys place an immense burden on manufacturers and government agencies. State-based standards that are inconsistent with international, federal or other state requirements make compliance difficult and costly and will likely threaten the viability of toy manufacturers, distributors and retailers in Connecticut. Specifically, in California where similar legislation passed in 2008 to regulate “chemicals of concern” in consumer products, it has been estimated that **the cost of the program to the State will be \$7.3 million-dollars over the first five years¹**. While House Bill 5314 is slightly narrower in focus, the costs to the state would be similar to those estimated in California.

Additionally, this legislation creates a state-specific chemicals restriction program and establishes **broad chemical substitution mandates** based purely on the hazards of a substance that may-or-may-not be contained in a product. Ensuring compliance with the new requirements of this proposal would mandate **fast-paced chemical substitutions**, unnecessary product recalls, product testing, and extensive research and development costs. For product manufacturers, and especially small and medium sized companies, this state-based chemicals substitution mandate is simply too costly to bear in the current economy, *or* any economic condition and ***will not*** result in measurable improvements to public health.

This legislation also does not provide the necessary resources needed to properly implement this program through a science-based approach that evaluates both exposure and harm from a chemical used in a product and places burdensome data development mandates on product manufacturers. The resource burden of this program would also escalate over time to continually review and certify products for sale in Connecticut and could jeopardize the viability of many businesses in Connecticut and around the country. This burden of this type of broad-reaching

¹ California State Senate Appropriations Committee Fiscal Summary, AB 283. Available at: http://info.sen.ca.gov/pub/07-08/bill/asm/ab_1851-1900/ab_1879_cfa_20080807_131956_sen_comm.html

policy is simply **too extensive to be instituted on a state-by-state approach**. Such a burden of this type of program would threaten the very existence of many smaller toy manufacturers.

Lack of Adequate Stakeholder Input

House Bill 5314 also does not provide for adequate stakeholder input into the designation of priority chemicals or banning certain chemicals in a product category; or even the development of this program in general. The lack of such processes undermines an adequate dialogue and sharing of relevant scientific data and would likely result in arbitrary and misguided chemical use bans and elimination of products. Additionally, there is no option for a product manufacturer to demonstrate that the risks associated with the use of chemicals are adequately controlled in their product formulations. This is absolutely essential to ensuring viable and safe products remain on the market and regrettable substitutions do not result as a consequence of this program.

Conclusion

The Toy Industry Association and its members have always recognized the special relationship we have with children, who are our principal consumers; their safety and well-being is always our top priority. As parents ourselves and an industry devoted to bringing joy (and safety) to childhood, we share your interest in the safety of toys and we urge you to carefully consider the unintended consequences of the provisions proposed in this legislation and how this bill will hurt those doing business in Connecticut and force Connecticut consumers to source products through other means, at no measurable increase to product safety. **Therefore, we respectfully request that you oppose the passage of House Bill 5314**

On behalf of the over 500 members of Toy Industry Association, including our member companies in Connecticut, we thank you for consideration of these concerns. TIA would be happy to address any questions that you and the members of the Committee might have with regard to our concerns on this legislation.